

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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WILLIAM MITCHELL,

Petitioner,

MEMORANDUM & ORDER  
04-CV-3367 (JS)

-against-

SUPERINTENDENT, MID-STATE  
CORRECTIONAL FACILITY,

Respondent.

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APPEARANCES:

For Petitioner: William Mitchell, Pro Se  
P.O. Box 835  
Middle Island, NY 11953

For Respondent: Guy Arcidiacano, Esq.  
Suffolk County District Attorney's Office  
200 Center Drive  
Riverhead, New York 11901

SEYBERT, District Judge:

On August 15, 2009, this Court denied Petitioner William Mitchell's motion for a reconsideration (Docket No. 87). Petitioner appealed this Court's decision to the United States Court of Appeals for the Second Circuit. The Court of Appeals denied Petitioner's appeal without prejudice because this Court had not yet issued or denied a certificate of appealability.

Pursuant to Fed. R. App. P. 22(b) and 28 U.S.C. § 2253(c)(2), a certificate of appealability is denied as Petitioner has not made a substantial showing of a denial of a constitutional right. Miller-El v. Cockrell, 537 U.S. 322, 336, 123 S. Ct. 1029, 1039, 154 L. Ed. 2d 931 (2003); Luciadore v. New York State Div. of Parole, 209 F.3d 107, 112 (2d Cir. 2000).

SO ORDERED.

/s/ JOANNA SEYBERT  
Joanna Seybert, U.S.D.J.

Dated: Central Islip, New York  
October 1, 2009